

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-210445

DATE: May 24, 1983

MATTER OF: K. P. B. Industrial Products, Inc.

DIGEST:

1. Failure by bidder to complete various standard representations and certifications on the bid form, as well as the provision designating location where supplies are to be inspected, may be waived as a minor informality, since the omissions do not relate to bid responsiveness.
2. Fact that bidder qualifying for labor surplus area (LSA) preference changes, after bid opening and with the contracting agency's consent, the performance location and the percentage of costs to be incurred in an LSA does not affect the bidder's eligibility for the preference, since the firm still will perform at least the minimum required percentage in an LSA.
3. GAO does not review affirmative determinations of responsibility except in limited circumstances.

K. P. B. Industrial Products, Inc. (KPB) protests the award of a contract to Martinez, Inc. under invitation for bids (IFB) No. DLA100-82-B-1316 issued by the Defense Logistics Agency (DLA). The contract is for 660,000 small arms ammunition cases for the M-16 rifle. The solicitation was issued as a total small business set-aside and provided a 2.2 percent evaluation advantage to bidders who agreed to perform at least 50 percent of the contract in geographic areas that are classified as Labor Surplus Areas (LSAs) by the Secretary of Labor. KPB's protest involves alleged irregularities in the bid submitted by Martinez, Martinez' eligibility for the LSA preference, and Martinez' capability to perform the contract.

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We deny the protest concerning Martinez' bid and eligibility for the preference. We dismiss the protest about the firm's capability.

KPB argues that the bid submitted by Martinez should have been found nonresponsive. First, KPB complains that Martinez failed to sign or acknowledge three material amendments to the solicitation prior to bid opening. This complaint is without merit, however, because Martinez did expressly acknowledge the receipt of all three amendments on the bid form itself. That acknowledgment is all that is required to insure that acceptance of the bid legally binds the bidder to comply with the amendments' terms. Fordice Construction Company, B-206633, April 30, 1982, 82-1 CPD 401.

Second, KPB argues that Martinez' failure to complete various standard representations and certifications in the bid rendered the bid nonresponsive. KPB alleges that Martinez failed to complete, or improperly completed, the Buy American certification, the "Contingent Fee" representation, and the "Affiliation and Identifying Data" provision, and also failed to designate in the clause provided the location (plant and address) where supplies were to be inspected.

Regarding the inspection location, Martinez indicated in the same clause that inspection was to occur at the contractor's plant, and elsewhere in the bid stated the plant's location. Martinez' failure to complete the particular provision in issue clearly did not affect the acceptability of the bid, and thus may be waived as a minor informality. Defense Acquisition Regulation (DAR) § 2-405 (1976 ed.). With respect to the representations and certifications, we repeatedly have held that their completion is not required to determine whether a bid meets the requirements of the specifications and, therefore, the failure to complete these items does not affect the responsiveness of the bid. See Bryan L. and F. B. Standley, B-186573, July 20, 1976, 76-2 CPD 60; Tennessee Valley Service, Inc., B-186380, June 25, 1976, 76-1 CPD 410. Accordingly, any omissions made by Martinez in completing the various standard representations and certifications may be waived.

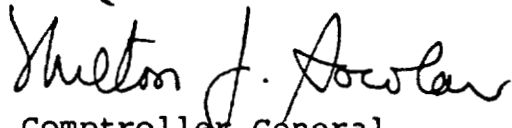
KPB also contends that Martinez should not be considered eligible for the LSA preference. Martinez had certified in its bid that 100 percent of the contract

would be performed at its plant in Fort Wayne, Indiana, an LSA. KPB complains that Martinez has changed the performance location, and that Martinez is now approximating that only 90 percent of contract costs will be incurred in LSAs, with only 53 percent of the work being done at the new location. DLA has agreed to both the location and the percentage changes.

There is no legal merit to KPB's arguments. We have held that a firm that commits itself in the bid in a manner that renders the firm eligible for the LSA preference subsequently may change the place where the requisite proportion of costs will be incurred, as long as the new location is within an LSA. See Uffner Textile Corporation, B-205050, December 4, 1981, 81-2 CPD 443. Further, a bidder's representation as to the amount of costs to be incurred in LSAs is immaterial except to the extent that it must represent at least the amount required in the solicitation. Consequently, a bidder who represents that 100 percent of the contract costs will be incurred in LSAs may reduce that amount after bid opening provided the actual amount still exceeds that required. Id. Accordingly, we find no impropriety in the contracting officer's allowing Martinez to change the location of its place of performance or the percentage of contract costs that will be incurred in LSAs. This protest ground is denied.

KPB has also raised several questions concerning the ability of Martinez to perform the contract. The allegations constitute a challenge to DLA's affirmative determination of responsibility, evidenced by the award to Martinez. This Office does not review a contracting officer's affirmative determination of responsibility absent a showing that the contracting officer may have acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Jenkins Equipment Co., Inc., B-207512, June 2, 1982, 82-1 CPD 531. KPB does not allege that either exception is present and, accordingly, this aspect of KPB's protest is dismissed.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States